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CONTEMPORARY FORMS OF SLAVERY

Updated review of the implementation of and follow-up to the conventions on slavery

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Introduction

1 At its twenty-third session in 1998 the Working Group on Contemporary Forms of Slavery "asked David Weissbrodt and Anti-Slavery International to prepare a comprehensive review of existing treaty and customary law covering all the traditional and contemporary slavery-related practices and relevant monitoring mechanisms" [3] At its twenty-fourth session in 1999 the Working Group received a working paper containing a consolidation and review of the conventions on slavery and an executive summary of that paper (E/CN 4/Sub 2/AC 2/1999/6) The working paper provided an update of the two previous studies by members of the Sub-Commission on the subject of slavery, by Mohamed Awad in 1966[4] and the update by Benjamin Whitaker in 1984 [5] The Working Group expressed its appreciation for the review of the conventions on slavery and the related executive summary, it also recommended to the Sub-Commission that the Sub-Commission invite the authors of the review of international standards to update the review and submit it to the Sub-Commission for its consideration and eventual transmission to the Commission

2 At its fifty-first session the Sub-Commission on the Promotion and Protection of Human Rights adopted resolution 1999/17 of 26 August 1999 in which it expressed its appreciation to David Weissbrodt and Anti-Slavery International for their consolidation and review of the conventions on slavery and for the executive summary In that resolution the Sub-Commission also invited "the authors of the review of international standards to update the review and submit it to the Sub-Commission for its consideration and eventual transmission to the Commission" This updated review responds to that invitation, provides a further update on the Awad and Whitaker studies, and summarizes the core international law against slavery its origins and the progress of the international campaign to abolish the slave trade and slavery, the legal instruments and institutions which have been established to combat slavery (including the United Nations Working Group on Contemporary Forms of Slavery), the evolving definition of slavery, contemporary forms of slavery, and other related practices It then focuses briefly on serfdom, forced labour, debt bondage, migrant workers, trafficking in persons, prostitution, forced marriage, the sale of wives and other issues, before discussing international monitoring mechanisms The review ends with tentative conclusions and recommendations This review is accompanied by an addendum (E/CN 4/Sub 2/2000/3/Add 1) that provides a more comprehensive discussion of the various forms of slavery

No one shall be held in slavery or servitude, slavery and the slave trade shall be prohibited in all their forms[6]

I CORE INTERNATIONAL LAW AGAINST SLAVERY

A Background

3 Although slavery has existed since ancient times,[7] the 1815 Declaration Relative to the Universal Abolition of the Slave Trade was the first international instrument to condemn it The abolitionist movement began as an effort to stop the Atlantic slave trade and to free slaves in the colonies of European countries and in the United States A large number of agreements dating from the early nineteenth century, both multilateral and bilateral, contain provisions prohibiting

such practices in times of war and peace. It has been estimated that between 1815 and 1957 some 300 international agreements were implemented to suppress slavery. None has been totally effective.

4. The predecessor of the United Nations, the League of Nations, was very active in its work to eliminate slavery, and as a result international attention focused on the elimination of slavery and slavery-related practices following the first world war.[8] After the second world war the United Nations continued working towards the elimination of slavery, and as a result it is now a well-established principle of international law that the "prohibition against slavery and slavery-related practices have achieved the level of customary international law and have attained 'jus cogens' status".[9]

5. The International Court of Justice has identified the protection from slavery as one of two examples of "obligations erga omnes arising out of human rights law",[10] or obligations owed by a State to the international community as a whole. The practice of slavery has thus been universally accepted as a crime against humanity, and the right to be free from enslavement is considered so fundamental "that all nations have standing to bring offending States before the Court of Justice".[11] Slavery, slave-related practices, and forced labour constitute:

(a) A "war-crime" when committed by a belligerent against the nationals of another belligerent;

(b) A "crime against humanity" when committed by public officials against any person irrespective of circumstances and diversity of nationality;

(c) A common international crime when committed by public officials or private persons against any person.[12]

B. Definition of slavery: the Slavery Convention of 1926 and the Supplementary Convention of 1956

6. The definition of slavery has caused controversy since the beginning of the abolition process, yet is of paramount importance for the international community in working towards its effective eradication. Definitions have caused controversy for two reasons: first, there are differences of opinion about which practices should be categorized as slavery and thus designated for elimination; second, definitions have often been accompanied by obligations on States to carry out particular remedial measures. There has invariably been disagreement about the most appropriate strategies to eradicate any form of slavery.

7. In order for the United Nations or any other international body to carry out a mandate concerned with slavery effectively, it is necessary to develop an international consensus on what practices are included within the concept of slavery. If the term is interpreted in such a manner as to include all of the social injustices or human rights violations that may occur, it becomes so broad as to be meaningless. This overbroad approach in turn would lead to a dilution of the work against slavery and reduce its effectiveness in achieving its objective of eliminating slavery. Slavery as defined in the international instruments must, therefore, be reviewed in an effort to identify the practices included within its scope.

8. A definition of slavery first appeared in an international agreement in the League of Nations Slavery Convention of 25 September 1926. It defined slavery as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised" (art. 1 (1)). It further defined the slave trade as "all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged; and, in general, every act of trade or transport in slaves" (art. 1 (2)). The Convention also distinguished forced labour, stipulating that "forced labour may only be exacted for public purposes" and requiring States parties "to prevent compulsory or forced labour from developing into conditions analogous to slavery" (art. 5).

9. Before the Slavery Convention various forms of slavery had been identified in a list prepared by the Temporary Slavery Commission in 1924 and subsequently approved by the Council of the League of Nations. In addition to enslavement, slave raiding, the slave trade, and slave dealing, the list included

> "1. (c) Slavery or serfdom (domestic or predial);
>
> "2. Practices restrictive of the liberty of the person, or tending to acquire control of the person in conditions analogous to slavery, as for example:
>
> "(a) Acquisition of girls by purchase disguised as payment of dowry, it being understood that this does not refer to normal marriage customs;
>
> "(b) Adoption of children, of either sex, with a view to their virtual enslavement, or the ultimate disposal of their persons;
>
> "(c) All forms of pledging or reducing to servitude of persons for debt or other reason ... [and]
>
> "4. System of compulsory labour, public or private, paid or unpaid."[13]

10. By referring to "any or all of the powers of ownership" in its definition of slavery, and setting forth as its stated purpose the "abolition of slavery in all its forms" the Slavery Convention covered not only domestic slavery but also the other forms of slavery listed in the Report of the Temporary Slavery Commission.[14]

11. Although the Slavery Convention outlawed slavery and associated practices, it not only failed to establish procedures for reviewing the incidence of slavery in States parties, but also neglected to create an international body which could evaluate and pursue allegations of violations. Despite these drawbacks, the League of Nations was able, through publicity and pressure on Governments, to encourage the implementation of legislation abolishing slavery in countries such as Burma (1928) and Nepal (1926).[15] In 1931 the League established committees of experts to consider information about slavery, but the work of the second of these bodies, the Advisory Committee of Experts on Slavery, was ended by the outbreak of the second world war.

12. The period before the second world war also saw the adoption of a series of international conventions concerning the traffic of women for prostitution. These abuses were not mentioned in the Slavery Convention, nor addressed by the various committees of experts on slavery, although the first of the international conventions on traffic in women referred in its title to the "white slave trade" [16]

13. In 1949, the United Nations Economic and Social Council appointed an Ad Hoc Committee of Experts on Slavery which found that there was "not sufficient reason for discarding or amending the definition contained in article 1 of the Slavery Convention 1926". [17] The Committee did point out, however, that the definition in the Slavery Convention did not cover the full range of practices related to slavery and that there were other equally repugnant forms of servitude that should be prohibited. The Committee thus recommended that a supplementary convention be drafted to cover practices analogous to slavery - many of which had been identified by the League of Nations when preparing the earlier convention.

14. The Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery of 1956 "went further and covered more ground than the 1926 Convention". [18] It obliged States parties to abolish, in addition to slavery, the following institutions and practices, identified collectively as "servile status". [19]

(a) Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined;

(b) Serfdom, that is to say, the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status;

(c) Any institution or practice whereby:

(i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any person or group; or

(ii) The husband of a woman, his family, or his clan has the right to transfer her to another person for value received or otherwise; or

(iii) A woman on the death of her husband is liable to be inherited by another person;

(d) Any institution or practice whereby a child or young person under the age of 18 years is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.

15. The inclusion of practices such as serfdom was somewhat confusing as they were covered by the Slavery Convention. Article 1 of the Supplementary Convention consequently clarified that States parties should seek "the complete abolition or abandonment" of the various institutions and practices which were identified "where they still exist and whether or not they are covered by the definition of slavery contained in article 1 of the Slavery Convention".

16. Although there have been subsequent appeals made to redefine slavery in the context of today's world, the combined definition of slavery set forth in the Convention of 1926 and the Supplementary Convention of 1956 has remained unchanged. The United Nations has made various restatements of the definition,[20] but in the international legal context the definition has not been altered substantially since 1926.

C. Main characteristics of slavery

17. Ownership is the common theme existing in all of the conventions concerning the abolition of slavery and slavery-like practices. The wording of the Slavery Convention is ambiguous as to whether this concept of control must be absolute in nature in order to be considered a prohibited activity. Arguably, the use of the phrase "any or all of the powers attaching to the right of ownership" (art. 2) was intended to give a more expansive and comprehensive definition of slavery which would include not just the forms of slavery involved in the African slave trade, but also practices of a similar nature and effect.

18. Traditional slavery was referred to as "chattel slavery" on the grounds that the owners of such slaves were able to treat them as if they were possessions, like livestock or furniture, and to sell or transfer them to others. Such practices are extremely rare nowadays and the criterion of ownership may obscure some of the other characteristics of slavery associated with the complete control to which a victim of slavery is subjected by another human being, as implied by the Slavery Convention's actual wording, "any or all of the powers attaching to the right of ownership".

19. The circumstances of the enslaved person are crucial to identifying what practices constitute slavery, including: (i) the degree of restriction of the individual's inherent right to freedom of movement; (ii) the degree of control of the individual's personal belongings; and (iii) the existence of informed consent and a full understanding of the nature of the relationship between the parties.

20. It will become apparent that these elements of control and ownership, often accompanied by the threat of violence, are central to identifying the existence of slavery. The migrant worker whose passport has been confiscated by his or her employer, the child sold into prostitution, or the "comfort woman" forced into sexual slavery - all have the element of choice and control of their lives taken from them and passed to a third party, either an individual or a State.[21]

D. Other instruments prohibiting slavery

21. The prohibitions set out in the Slavery Convention and the Supplementary Convention were given significant legal support by the *International Bill of Human Rights*. *The Universal* Declaration of Human Rights states that "No one shall be held in slavery or servitude; slavery

and the slave trade shall be prohibited in all their forms" (art. 4). The International Covenant on Economic, Social and Cultural Rights recognizes the right to work "which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts" (art. 6 (1)). In articles 5, 7, and 8 the Covenant further sets certain conditions and rights that must be upheld and protected by the States parties such as fair wages and equal remuneration for work of equal value and the right to form and join trade unions.

22. The International Covenant on Civil and Political Rights in article 8 contains a prohibition against slavery and servitude similar to that contained in the Universal Declaration. The importance accorded by the Covenant to the slavery provision is emphasized by its status as a non-derogable right under article 4 (2). Article 8 also contains a provision which prohibits the use of forced or compulsory labour subject to certain limited exceptions.

23. The most recent reference to slavery in an international instrument is in article 7 (2) (c) of the Rome Statute of the International Criminal Court, which characterizes "enslavement" as a crime against humanity falling within the jurisdiction of the Court.

E. Violations of other fundamental rights associated with slavery

24. The process of enslavement, as well as, in many cases, the treatment of victims of slavery, servile status and forced labour, is often accompanied by other violations of human rights. For example, the classic process of enslavement, involving either abduction or recruitment through false promises or duplicity, involves a violation of the individual's right to liberty and security of person, as guaranteed by article 9 of the International Covenant on Civil and Political Rights, together in many cases with a violation of the right of a person deprived of his/her liberty to be treated with humanity and of the right not to be subjected to cruel, inhuman or degrading treatment.[22] Historical images of slavery, again based on the Atlantic slave trade and treatment of African slaves in the Americas, focus primarily on the ill-treatment of slaves, particularly branding or mutilation of individuals to facilitate their identification. The Supplementary Convention of 1956 explicitly prohibits "the act of mutilating, branding or otherwise marking a slave or a person of servile status in order to indicate his status, or as a punishment, or for any other reason ..." (art. 5). Other forms of ill-treatment, including beatings and other corporal punishment, are a violation of the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment.[23]

25. Victims of slavery, servile status and forced labour are, almost by definition, deprived of their right under article 12 of the International Covenant on Civil and Political Rights to liberty of movement and freedom to choose their residence. Almost invariably, they are deprived of or prevented from exercising their right of access to the courts and to a fair trial[24] by their owners, controllers, employers, or by the authorities themselves.

26. The list of aggravating circumstances, of abuses of fundamental rights which accompany slavery and related abuses is almost endless. In the harshest cases it includes depriving individuals of their identity (by giving them a new name, often one associated with a different religion or ethnic identity), obliging them to speak a new language, and forcing them to change their religion or subjecting them to coercion in violation of article 18 of the International Covenant on Civil and Political Rights.[25] Some extreme cases also involve preventing

individuals from exercising their right to marry and to establish a family,[26] notably when the victims are women who are forced to act as the mistresses or concubines of the men who control them, or are forced to remain in prostitution. Virtually all cases involve violations of the victims' freedom of expression, their right to receive and impart information, their right of peaceful assembly, and their freedom of association.

27. In some societies slaves have been prevented from owning or inheriting property. One of the legacies of slavery still affecting people categorized as "slaves" in one country where slavery has been formally abolished on several occasions is that, on the death of former slaves, the families of their former owners still intervene to take possession of their property - sometimes with the authority of the courts - thus preventing the heirs of former slaves from inheriting.[27] Such practices violate article 17 of the Universal Declaration, as well as article 26 of the International Covenant on Civil and Political Rights. Former slaves, their descendants, or others regarded socially as having slave status are subjected to a wide range of discrimination in many societies.

II. FORMS OF SLAVERY

28. In this section the review will summarize briefly the various forms of slavery. For a more comprehensive discussion of these issues, see the addendum to the present document.

A. Serfdom

29. The Supplementary Convention of 1956 categorizes serfdom as a form of "servile status", and defined it as "the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status" (art. 1 (b)). Land tenure systems viewed in all their aspects - legal, economic, social and political - can in certain circumstances be seen as oppressive power relationships arising from ownership or use of land and disposition of its products to create forms of servitude and bondage.[28] Both serfdom and debt bondage are sometimes referred to by the term "peonage", particularly in the Latin American context.[29]

B. Forced labour

30. The use of forced labour has been condemned by the international community as a practice similar to, but distinct from slavery. The League of Nations and the United Nations have made a distinction between slavery and forced or compulsory labour and the International Labour Organization was given principal responsibility for the abolition of the latter.

1. International Labour Organization

31. The International Labour Organization (ILO) has adopted 182 conventions in the international labour code on issues ranging from protection of maternity to protection of the most vulnerable and poverty-stricken labourers. The ILO has four fundamental principles which it

aims to achieve, namely: the elimination of forced labour; freedom of association, including the right to form or join a trade union; the effective abolition of child labour; and the ending of discrimination in employment.[30]

2. Forced labour conventions

32. The Forced Labour Convention, 1930 (No. 29) provides for the abolition of forced labour.[31] It defines forced or compulsory labour in article 2 (1) as meaning "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily". It is clear from this description that forced labour as understood by the international community does not include a concept of ownership as does slavery. Yet the practice imposes a similar degree of restriction on the individual's freedom - often achieved through violent means.

33. The Abolition of Forced Labour Convention, 1957 (No. 105) provides for the immediate and complete eradication of forced labour in specific circumstances. Article 1 imposes an obligation on the State parties to suppress the use of forced labour for political purposes, for purposes of economic development, as a means of labour discipline or punishment for strike action, and as a means of discrimination. ILO Convention No. 29 and ILO Convention No. 105 (collectively referred to as the "ILO forced labour conventions") concerning the abolition and control of forced labour are essentially the only international instruments that set out a definition of forced labour, although its prohibition is endorsed by many treaties, both international and regional.

34. It should be noted, however, that not all forms of forced labour are prohibited under the ILO forced labour conventions. Article 2 (2) of Convention No. 29 sets out certain specific exemptions which otherwise would have fallen under the definition of forced or compulsory labour. The ILO forced labour conventions do not prohibit prison labour but they do place restrictions on its use. Convention No. 29 exempts from its provisions "any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country" and excludes "any work or service exacted in virtue of compulsory military service laws for work of a purely military character". The right of a Government to exact forced labour in times of emergency is also exempted from the forced labour conventions. Examples of such circumstances include "war or ... a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic ..." Convention No. 29 also exempts minor communal services "being performed by the members of the community in the direct interest of the said community".

3. Other relevant human rights instruments

35. In addition to the two International Covenants on Human Rights, the General Assembly adopted the International Convention on the Suppression and Punishment of the Crime of Apartheid in 1973, outlawing a number of inhuman acts committed for the purpose of establishing and maintaining domination by one racial group over any other, including exploitation of the labour of the members of a racial group or groups by submitting them to forced labour.

36. Regional agreements have subsequently come into force which contain similar provisions to the two International Covenants, such as the American Convention on Human Rights (art. 6) and the African Charter on Human and Peoples' Rights (art. 5). The European Commission on Human Rights identified two factors that must be present when considering forced or compulsory labour, "firstly, that the work is performed against the complainant's will and secondly, that the work entails unavoidable hardship to the complainant".[32]

37. Other categories of practices similar to slavery that have over the years been incorporated into the forced labour concept by the ILO include debt bondage and child labour. These categories are considered under separate headings below.

C. Debt bondage

38. Debt bondage (often termed "bonded labour", which refers to exactly the same practices) is defined in the Supplementary Convention as the "status or condition arising from a pledge by a debtor of his personal services or those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined" (art. 1 (a)). The Supplementary Convention characterizes debt bondage as a "servile status" (art. 7 (b)) and obliges the States parties to implement national provisions to abolish it.

39. Although the ILO did not include debt bondage in the definition of forced labour in Convention No. 29, there does appear to be a consensus that the two practices overlap. The preamble to Convention No. 105 refers specifically to the Supplementary Convention, noting that it provides for the complete abolition of "debt bondage and serfdom". "Forced labour" is a broad term and the ILO has confirmed that there is a very wide range of practices that affect the freedom of workers which lead to varying degrees of compulsion in their work. The ILO has over time included debt bondage within the ambit of Convention No. 29.

40. The ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999 (No. 182) specifically includes debt bondage and its suppression. The Convention concerning Basic Aims and Standards of Social Policy, 1962 (No. 117) is particularly concerned with reducing forms of wage payment that foster indebtedness.[33] The objective of the Convention concerning Minimum Wage Fixing, with Special Reference to Developing Countries, 1970 (No. 131)[34] and its accompanying Recommendation No. 135, are to give wage-earners the necessary social protection in terms of minimum permissible levels of wages.[35] The Convention concerning the Protection of Wages, 1949 (No. 95)[36] requires wages to be paid regularly by employers and prohibits methods of payment that deprive workers of the genuine possibility of terminating their employment.

D. Exploitation of migrant workers

41. While all the existing instruments concerning slavery, servile status and forced labour apply to aliens and migrant workers as well as others, certain techniques of exploitation akin to slavery affect migrant workers in particular. These practices include employers confiscating workers' passports and, particularly in the case of domestic workers, keeping them in virtual captivity. They require special remedial action.[37] Migrant workers are subjected to a wide range

of abuse and discrimination, most of which do not constitute slavery, servitude, or forced labour. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families was adopted by the United Nations in 1990 in an attempt to counter these practices, but it has not yet entered into force. The ILO has also adopted a series of conventions to address the employment of migrant workers.

E. Trafficking

42. The International Convention for the Suppression of the White Slave Traffic of 1910 imposed an obligation on the parties to punish anyone who recruits a woman below the age of majority into prostitution, even with her consent. In 1933, article 1 of the International Convention for the Suppression of the Traffic of Women of Full Age established a duty to prohibit, prevent and punish the trafficking of women even when done with their consent.

43. The 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (the Suppression of Traffic Convention) consolidated the earlier instruments relating to the "white slave trade" and traffic in women and children[38] and today forms the legal basis of the international protection against the traffic in persons. The Suppression of Traffic Convention makes it an offence to procure, entice or lead away a person for the purposes of prostitution even with the consent of that person (art. 1 (1)). Although recruitment need not be across international borders to qualify as "trafficking" under the Suppression of Traffic Convention, the parties are required to monitor immigration and emigration routes in order to halt trafficking for prostitution (art. 17). Article 1 of the Suppression of Traffic Convention requires the woman or man being trafficked to have been recruited "to gratify the passions of another" and "for purposes of prostitution".

44. There have been various suggestions since the Suppression of Traffic Convention was adopted in 1949 that the definition of "traffic in persons" should be extended to cover forms of recruitment which are not directly linked to prostitution, and also the movement of men, women, or children across international frontiers for purposes other than prostitution, when they are being subjected to coercion or are being deceived about the nature of the situation which awaits them.

45. The Convention on the Elimination of All Forms of Discrimination against Women includes in its article 6 the obligation that States parties suppress trafficking in women. The Declaration on the Elimination of Violence Against Women[39] also forbids "trafficking in women".

46. The Convention on the Rights of the Child specifically prohibits trafficking in children. The Inter-American Convention on International Traffic in Minors, adopted by the Organization of American States (OAS) on 18 March 1994, defines the scope of traffic (or trafficking) in children in greater detail than any other instrument. A working group of the Commission on Human Rights has prepared a draft Optional Protocol to the Convention on the Rights of the Child dealing specifically with the sale of children, child prostitution and child pornography. At its fifty-sixth session in March/April 2000, the Commission, by resolution 2000/59 of 26 April 2000, transmitted the draft Optional Protocol to the General Assembly, through the Economic and Social Council, for adoption

47. In 1998, the General Assembly established an open-ended intergovernmental ad hoc committee for the purpose of elaborating an International Convention against Transnational Organized Crime and discussing the elaboration of international instruments addressing trafficking in persons, particularly women and children, and the illegal trafficking in and transporting of migrants, in addition to other issues such as illegal trafficking in firearms.

48. The Working Group on Contemporary Forms of Slavery has recognized the variety of circumstances in which trafficking occurs, adopting at its 1998 session one recommendation dealing with traffic in persons and exploitation of the prostitution of others, and another dealing with prevention of the transborder traffic in women and girls for sexual exploitation.[40] The latter explicitly declares that "transborder trafficking of women and girls for sexual exploitation is a contemporary form of slavery and constitutes a serious violation of human rights".[41]

F. Prostitution

49. The Suppression of Traffic Convention requires States to punish "any person who, to gratify the passions of another ... procures, entices or leads away, for purposes of prostitution, another person ... [or] otherwise exploits the prostitution of another person" (art. 1 (1) and (2)). The prohibition refers both to cases in which the prostitute is subjected to some form of coercion, as well as to acts carried out "with the consent of that person" (art. 1 (2))[42].

50. International instruments do not contain a definition of prostitution, though it is most commonly interpreted according to its ordinary meaning, that is "any sexual act offered for reward or profit". The Suppression of Traffic Convention makes it clear that the reference to prostitution includes men practising prostitution, as well as women and children under the age of 18. The act of prostitution itself committed by adults over 18 is not explicitly prohibited by international standards but the Suppression of Traffic Convention strongly discourages it.[43] Other international instruments clearly consider the exploitation of prostitution - when money made through prostitution is passed on a systematic basis to anyone other than the prostitute herself - as a form of slavery.[44]

51. While there is continuing debate about whether adult prostitution should be tolerated in some circumstances, the Convention on the Rights of the Child clearly prohibits all forms of sexual exploitation and sexual abuse (art. 34).

52. The concept of sexual slavery is closely related to that of forced prostitution but is a distinct form of sexual exploitation. There does not have to be any financial gain in sexual slavery; it is merely the imposition of absolute control or power of one person over another. It is the sexual exploitation of individuals through the use or threat of force, often occurring in times of armed conflict or belligerent occupation. Sexual slavery violates the fundamental guarantees of basic human rights in the International Bill of Human Rights and the four Geneva Conventions of 12 August 1949 for the protection of war victims applicable during periods of armed conflict.

G. Forced marriage and the sale of wives

53. The Supplementary Convention of 1956 identifies institutions or practices akin to slavery to which women can be subjected in the context of marriage (art. 1 (c)). These practices also violate the Universal Declaration which provides that "[m]arriage shall be entered into only with the free and full consent of the intending spouse" (art. 16 (2)). Accordingly, the Supplementary Convention prohibits the sale or transfer of a woman into a forced marriage as well as the inheritance of a widow on her husband's death by a member of her deceased husband's family.

H. Child labour and child servitude

54. A number of international standards address the issue of the exploitation of children's labour, in particular by seeking to prohibit employment below a specified minimum age. Other standards identify circumstances or conditions in which no children may be employed. Not all forms of child labour fall within the definition of slavery or servitude. The Supplementary Convention of 1956 specifically prohibits the delivery of a child with the intent to exploit the child's labour (art. 1 (d)).

I. Other issues

55. There are a number of other issues which have been considered by the Working Group on Contemporary Forms of Slavery, including apartheid, colonialism, trafficking in human organs and incest. Although these practices generally constitute serious violations, they may not all fall within the ambit of the international conventions abolishing slavery.

III. INTERNATIONAL MONITORING MECHANISMS

56. National authorities possess the primary obligation to protect the human rights of residents, including, of course, the prohibition of slavery and slavery-like practices.[45] The efforts of national authorities are augmented, however, by international human rights norms and procedures for implementing and ensuring compliance with international human rights treaties. For example, the International Covenant on Civil and Political Rights prohibits "slavery and the slave-trade in all their forms" (art. 8) and establishes a Human Rights Committee to monitor compliance. That treaty and international law generally recognize that Governments are obligated "to respect and to ensure to all individuals within its territory and subject to its jurisdiction" the guaranteed rights and "to take the necessary steps, in accordance with its constitutional processes and with the provisions of the [treaty], to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the [treaty]" (art. 2). The primary responsibility of national authorities to protect human rights is underlined by the general rule of international law that all available domestic remedies must be exhausted before resorting to international settlement procedures.[46] There are therefore important links between national and international monitoring methods that cannot be overlooked, although the focus of this section is on international mechanisms.

57. International human rights law has evolved a number of mechanisms for ensuring implementation and monitoring. Since the adoption of the International Covenant on Civil and Political Rights in 1966 all major human rights treaties have provided for an expert body, such as

the Human Rights Committee under the International Covenant on Civil and Political Rights, to oversee implementation of their respective multilateral conventions by receiving and reviewing periodic reports from the Governments that have ratified the relevant treaties. Most of the treaty bodies issue conclusions and recommendations after reviewing each State party's report. Most of the treaty bodies also occasionally issue general comments or recommendations that authoritatively construe provisions of their treaties and summarize their experience in reviewing States parties' reports. Further, three of the treaty bodies - the Human Rights Committee, the Committee on the Elimination of Racial Discrimination and the Committee against Torture - may receive communications from individuals complaining about violations of those treaties and thus issue adjudicative decisions interpreting and applying treaty provisions. A fourth, the Committee on the Elimination of Discrimination against Women, will be able to do so once the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, adopted by the General Assembly on 6 October 1999 in resolution 54/4, enters into force.[47]

58. Under the authority of the Charter of the United Nations rather than on the basis of a specific human rights treaty, the United Nations Commission on Human Rights has developed several additional mechanisms for monitoring human rights. One of the most visible measures which the Commission has taken with respect to a violating State is to authorize a special rapporteur, special representative, or a working group to investigate and publish a report on the situation. The Commission has also established thematic special rapporteurs and working groups to deal with particular kinds of violations, for example on the sale of children.[48]

59. The Office of the High Commissioner for Human Rights (OHCHR) has conducted field operations in 22 countries since 1992. In 1996 the General Assembly also authorized the post of Special Rapporteur on the impact of armed conflict on children. Now called the Special Rapporteur for Children and Armed Conflict, the mechanism works in cooperation with UNICEF and OHCHR.

60. In 1970 the Economic and Social Council adopted resolution 1503 (XLVIII) authorizing the Commission on Human Rights to receive and review communications alleging the existence of a consistent pattern of gross violations of human rights. In the nearly 30 years of that procedure the Commission has dealt with over 65 country situations.

61. The Sub-Commission on Prevention of Discrimination and Protection of Minorities (renamed the Sub-Commission on the Promotion and Protection of Human Rights in 1999) has, as authorized by the Economic and Social Council and the Commission on Human Rights, established three inter-sessional working groups, on contemporary forms of slavery (1975), indigenous populations (1982) and minorities (1995).

62. Most of the international mechanisms for implementation have been developed since the advent of the treaties which prohibit slavery and slavery-like practices and thus those treaties did not incorporate procedures which are now considered to be indispensable for monitoring compliance with States' human rights obligations.

A. Conventions on slavery

63. Article 7 of the Slavery Convention provides that "the High Contracting Parties undertake to communicate to each other and to the Secretary-General ... any laws and regulations which they may enact with a view to the application of the provisions of the present Convention". [49] There is also a similar obligation to notify the Secretary-General of any measures implemented in national law pursuant to the provisions of the Supplementary Convention (art. 8 (2)). In comparison to the reporting and monitoring mechanisms of other, more recent human rights instruments, the reporting clauses of the Slavery Convention and the Supplementary Convention lack the requisite periodicity and specificity. Most importantly, the slavery treaties do not designate a treaty body to receive and comment upon the reports. They have little effect on the achievement of the States' obligations and contain no effective implementation mechanism for the provisions in these conventions abolishing slavery. The Sub-Commission has noted that this gap is "a clear defect in the arrangements made for the eradication of slavery and the slave trade and similar institutions and practices". [50]

64. Under the Slavery Convention and the Supplementary Convention, States parties agree, but are not obliged to send information on measures implemented in accordance with the conventions on slavery to the Secretary-General who in turn communicates such information to the Economic and Social Council for discussion "with a view to making further recommendations for the abolition of slavery". [51] The Economic and Social Council has not pursued this role actively. Instead, it established the Working Group on Slavery, which later became the Working Group on Contemporary Forms of Slavery under the aegis of the Sub-Commission, to review developments in the field of slavery based on all available information.

B. ILO mechanisms

65. The ILO has since its inception sought to establish a monitoring method that is acceptable to all States parties. The ILO process is widely regarded as one of the most effective systems of supervision, and many of the existing reporting procedures under other human rights treaties "owe much to the long experience of reporting under various conventions adopted by the ILO". [52] The principal ILO system for the application of international labour standards is based on reports received from Governments and is exercised by the Committee of Experts on the Application of Conventions and Recommendations. Article 22 of the ILO Constitution requires that all States report periodically on the conventions to which they are a party.

66. This mechanism starts with the submission of reports by Governments. Originally, reports were to be submitted every year on all ratified conventions. That system has since been revised on a number of occasions in view of the increasing number of conventions and members of the ILO. The periodicity of reporting now gives priority to the more important conventions, such as those dealing with fundamental human rights, on which detailed reports must be submitted every second year; reports on other conventions must be submitted every five years. The ILO Governing Body has decided that reports were no longer necessary for certain conventions which they determined had lost their relevance over time.

67. The reports are carefully reviewed by the staff of the ILO which prepares draft comments for the Committee of Experts, a body of distinguished individuals from different countries which meets once a year. The reports and the draft comments are then examined by the Committee of Experts, which makes juridical assessments in closed sessions. Although the Committee uses the reports submitted by Governments as a starting point, it also looks at other available official or reliable data, such as information gathered in the course of ILO direct contact missions, reports of United Nations bodies and other international agencies, as well as submissions from employers' and workers' organizations. These additional sources of information can be important to establish whether the conventions are implemented in practice.

68. The Committee of Experts reports annually to the Conference Committee on the Application of Conventions and Recommendations, a tripartite committee of the International Labour Conference.[53] The Conference Committee meets at the annual International Labour Conference to discuss in open sessions some of the more pressing cases referred by the Committee of Experts. The Conference Committee issues a report, adopted in the plenary session of the Conference, which is transmitted to the Governments concerned with specific references being made to what points should be addressed in the next report. Although the views of the Committee of Experts are not binding on the States parties, they do carry a certain amount of authority and in most instances are accepted. They provide a useful source of information on the meaning and application of the obligations in the ILO conventions.[54]

69. The second type of supervision exercised by the ILO involves an investigation into allegations that a State has failed to comply with its obligation under a convention it has ratified. It is a mechanism whereby the ILO can examine and find a general solution in situations arising from claims of non-compliance of a ratified treaty by a State party. Representations may be made under article 24 of the ILO Constitution by any employers' or workers' organization alleging that the State is in breach of its obligation; the procedure cannot be invoked by an individual claiming to be a victim of a violation of an ILO convention. The ILO Governing Body, if it determines that the representation is acceptable, appoints a tripartite committee.[55] The report of the committee, which includes the Government's response to the allegations, is sent to the Governing Body for adoption. If the Government's reply is unacceptable, the Governing Body can decide to publish the presentation and reply by way of sanction. This extraordinary procedure has only been pursued once, all of the other cases have been referred back to the Committee of Experts under the usual supervisory system.

70. This second mechanism can also be invoked under article 26 of the ILO Constitution whereby one State can lodge a complaint that another State has failed to observe the provisions of a ratified treaty. That inter-State complaint mechanism has very rarely been invoked. The Governing Body can also initiate such a procedure and refer a complaint to a Commission of Inquiry.[56] The Commission prepares a report both on issues of fact and law, setting out recommendations on how to rectify the problem. The Government concerned must indicate within a three-month period whether it accepts the Commission's recommendations and, if not, whether it intends to refer the matter to the International Court of Justice. This possibility of appeal has never been used because in most cases the recommendations of the Commission of Inquiry have been accepted.[57] If a Government does not comply with the recommendation in the report, the Governing Body can, under article 33 of the ILO Constitution, recommend to the

International Labour Conference the adoption of "such action as it may deem wise and expedient to secure compliance therewith". That provision has not to date been relied on because the parties involved generally prefer to reach a pragmatic conclusion.[58]

71. The Commission of Inquiry appointed under article 26 of the ILO Constitution to examine the compliance of Myanmar with the forced labour conventions issued a report of its findings and recommendations in 1998. The report clearly sets out "an international labour standard that protects a fundamental human right - the right not to be reduced to a state of slavery or forced labour, whichever form this may take".[59] The Commission of Inquiry confirms that international law prohibits absolutely any recourse to forced or compulsory labour and that any person who "violates this peremptory norm is guilty of a crime".[60] A year after its report was published, the International Labour Conference adopted a resolution condemning the Government of Myanmar for persistent violations of Convention No. 29 and determining that Myanmar would receive no development funds from the ILO and was to be suspended from ILO meetings, except insofar as either were aimed at securing compliance with the recommendations on ending forced labour.

ILO Declaration on Fundamental Principles and Rights at Work

72. At its 86th Session in 1998 the International Labour Conference adopted the ILO Declaration on Fundamental Principles and Rights at Work. The aim of the Declaration was to establish a list of rules that will apply globally even if the relevant conventions had not yet been ratified by the States parties.

73. Of particular importance for the monitoring and elimination of forced labour is the provision in paragraph 2 of the Declaration which imposes on

> "all Members, even if they have not ratified the Conventions in question ... an obligation, arising from the very fact of membership in the Organization, to respect, to promote and to realize ... the principles concerning the fundamental rights which are the subject of those Conventions, namely:
>
> "(a) Freedom of association and the effective recognition of the right to collective bargaining;
>
> "(b) The elimination of forms of forced or compulsory labour;
>
> "(c) The effective abolition of child labour;
>
> "(d) The elimination of discrimination in respect of employment and occupation."

74. The follow-up to the Declaration provides for two new monitoring mechanisms to be implemented. The first process will involve the Governing Body in receiving information from Governments which have not ratified one or more of the fundamental conventions on any changes which may have taken place in their law and practice. The second procedure is the submission of global reports to the International Labour Conference. These reports will provide

a dynamic global picture relating to each category of fundamental principles and rights noted during the preceding four-year period. It is expected they will also serve as a basis for assessing the effectiveness of the assistance provided by the ILO and for determining priorities for technical assistance in the following period. It is anticipated that these new reporting mechanisms will strengthen the ILO's capacity to promote and protect fundamental human rights, in particular through the elimination of forced labour.

C. Working Group on Contemporary Forms of Slavery

75. The mandate of the Working Group is to monitor the existence of "slavery and the slave trade in all their practices and manifestations".[61] The Working Group operates with a large degree of flexibility and receives information from Member States and non-governmental organizations (NGOs) relating to slavery, servitude, forced labour and other slavery-like practices. Although the conventions on slavery provide for States parties to submit reports to the United Nations, the Working Group has developed a practice of receiving information from whichever Governments may wish to present information. Normally, at each session the Working Group receives information from NGOs and then promptly informs the relevant Governments that they have been mentioned and may wish to submit further information. Since the Governments are rarely given more than a couple of days' notice, their responses are often spontaneous and they often offer to submit further information when it can be obtained.

76. The Suppression of Traffic Convention also imposes an obligation on States parties to submit annual reports to the Secretary-General of the United Nations setting out information on "such laws and regulations as may be promulgated, relating to subjects of the present Convention, as well as all measures taken by them concerning the application of the convention" (art. 21). The reporting requirement is seen as an important mechanism to encourage and monitor State compliance with international norms and the lack of any regulatory system relating to slavery and trafficking is a clear limitation. The United Nations is aware of this lacuna and it has been suggested that States parties' reports submitted under the Convention on the Elimination of All Forms of Discrimination against Women should include information on measures adopted to suppress trafficking[62] which is prohibited under article 6 of that convention. Similarly, the lack of a specialized monitoring body was noted by the Secretary-General in his 1966 report on traffic in women and girls wherein he suggested that "it may be opportune to consider the possibility of revising the treaty with a view to making it more effective in terms of both increasing the numbers of States parties and the creation of a regular reporting and monitoring mechanism".[63]

77. At the end of each of its annual sessional reports the Working Group submits a set of general recommendations for further action to its parent body, the United Nations Sub-Commission on the Promotion and Protection of Human Rights. The Sub-Commission usually supports these recommendations and submits any new proposals to the Commission on Human Rights for authorization and approval. (This cumbersome procedure can take a long time, however, and rarely mentions specific situations.[64]) A draft Programme of Action for the Elimination of Child Labour proposed by the Working Group in 1992 in this manner was adopted by the Commission on Human Rights in its resolution 1993/79. The Working Group had considered the problem of trafficking of persons at its twentieth session in informal discussions on information received from various organizations such as the ILO and the Action

for Children Campaign. After examining the problems raised by the menace of trafficking, the Working Group proposed the Programme of Action for the Prevention of Traffic in Persons and the Exploitation of the Prostitution of Others (E/CN.4/Sub.2/1995/28/Add.1). The programme contains suggestions on measures to be implemented by national authorities relating to law enforcement, rehabilitation, reintegration, and education. This recommendation of the Working Group was adopted by the Commission, albeit with significant reservations, in its resolution 1996/61.

78. The Working Group, therefore, has emerged as an informal forum within which States and NGOs can discuss issues of slavery or related practices but it has not developed effective procedures to follow up conclusions reached and recommendations adopted. The Working Group has interpreted its mandate in an expansive manner and has been creative in its interpretation of what constitutes slavery to cover a wide range of issues, for example problems concerning the rights of women, children and migrant workers. In order to be an effective forum for combating slavery the Working Group must be careful not to become embroiled in the consideration of issues that are relatively tangential to slavery as there are limits to the range of matters that can legitimately be brought under the existing definition of slavery in international law.

79. It should also be noted that no international body has been explicitly recognized as competent to receive and consider claims on the part of one State that another State is not fulfilling its obligations under the conventions on slavery. That gap may not be too serious since inter-State complaints mechanisms in other human rights treaties have rarely been used. In addition, it should be noted that no international body has been explicitly recognized as competent to receive and consider communications from individuals who claim to be victims of slavery. Nonetheless, the Working Group has received information about such violations and has informally sought responses from the Governments concerned. More importantly, the lack of a mandatory reporting requirement and a review mechanism has hindered the efficacy of the Working Group in applying the provisions of the conventions on slavery.

80. The only treaty mechanism that does exist under the present treaty-based regime is the jurisdiction given to the International Court of Justice to resolve any dispute that may arise concerning the interpretation or the application of the Slavery Convention (art. 8) or the Supplementary Convention (art. 10). In contrast, the more recent conventions such as the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women provide for specific institutions to be established to monitor the terms of those conventions. No such body exists in respect of slavery.

81. This clear defect in the existing regime under the conventions on slavery has been discussed many times but no change has been effected, although numerous suggestions on how to improve the system have been made. The six treaty monitoring mechanisms are generally regarded as far more effective in their respective domains than the Working Group on Contemporary Forms of Slavery. Hence, one option would be for the Working Group to seek authorization from the Commission on Human Rights to be recognized as the treaty monitoring body for the slavery-related conventions. That option would have the advantage of encouraging the Working Group to structure its work and to rely upon the procedural precedents of the treaty monitoring bodies.

82. It is difficult to assess whether the Working Group, given its current status, would be in a position to receive and review periodic reports from States. The Working Group receives "very limited substantive assistance in its work from the secretariat"[65] so that even if it wanted to carry out a systematic review of reports submitted under the Slavery Convention, the Supplementary Convention and the Suppression of Traffic Convention, it would not have sufficient resources to be effective.

83. States parties are already required to report upon their implementation of the prohibition of slavery and forced labour under article 8 of the International Covenant on Civil and Political Rights, as well as on the right of everyone to gain a living by freely accepted work for which fair wages are provided under articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights. Although neither the Human Rights Committee nor the Committee on Economic, Social and Cultural Rights has emphasized contemporary forms of slavery in its review of States parties' reports, it is uncertain whether Governments - already overburdened by their reporting responsibilities to the six existing treaty bodies - would be anxious to develop a comprehensive reporting process for the Working Group to monitor compliance with the slavery-related conventions.

84. Another option would be for the Working Group to build upon its approach of the past three years by continuing to focus on particular issues, for example, domestic workers, trafficking in persons, debt bondage, etc. At its 1998 session the Working Group identified trafficking for prostitution as the principal focus of its 1999 session and debt bondage as the principal focus for its session in the year 2000. At its 1999 session the Working Group was requested to select a sample of three to five States which would be expected to possess useful information about the theme to be discussed, so that the Governments could be informally invited to participate at the session the following year. Those Governments could be invited to submit written reports. Hence, each session of the Working Group would be divided into two parts - a more formal segment in which it would receive information from Governments and NGOs about the theme of that year, e.g. trafficking in persons. The second part of the session would be informal and at least partially without observers. During the second, informal part, the Working Group could (a) consider whether it could draw any conclusions from the information it had just heard about the theme of that year; (b) discuss what topic should be selected for the next and future years, and (c) hold consultations which would permit it to select a few countries which could be invited to participate at the following year's session of the Working Group.

85. Under this approach, Governments, in general, would be far less burdened than they would be by a comprehensive reporting process affecting all States parties. Instead of establishing a State reporting responsibility which would burden all States, only a few Governments would be asked to participate actively in the Working Group's session in a particular year. The Working Group would be expected to vary the countries invited to participate from year to year as the theme of the session would change every year or two. Also, Governments would generally be given much better information about the issues that might arise at a particular session than they receive at present. At its 1999 session, however, the Working Group refused to accept the option of focusing on particular countries, which would have substantially professionalized its activities, but it did identify a theme for its session for the year 2001, that is, trafficking in persons.

86. The Working Group could also seek a mandate in order formally to receive, consider and gather information about communications from individuals who claim to be victims of slavery or from others working on their behalf, as well as to establish a mechanism to consider and act on such communications between sessions. The mandate to take up urgent cases would allow the Working Group to be more effective in preventing and challenging human rights abuses relating to slavery. The Working Group could also seek a mandate to visit countries in order to gather information about compliance with international norms relating to slavery or individual cases which have been reported to the Working Group. After the issue was initially raised at the Working Group, a member of the Working Group undertook such a visit to Mauritania, in his capacity as a Sub-Commission expert, in the early 1980s. Nonetheless, in the late 1990s the Working Group declined an invitation from the Government of the Sudan to send a delegation to investigate slavery in the Sudan on the grounds that they had no mandate to do so.

87. A third option was suggested by the Bureau of the fifty-fourth session of the Commission on Human Rights in its report submitted pursuant to Commission decision 1998/112. Its proposal was to "terminate the mandate of the Sub-Commission's Working Group on Contemporary Forms of Slavery and transfer those responsibilities which are not addressed by existing mechanisms to a new Special Rapporteur on contemporary forms of slavery" (E/CN.4/1999/104, para. 20). This proposal may reflect the view of the Bureau of the Commission's fifty-fourth session, and at least some members of the Commission, that the Working Group on Contemporary Forms of Slavery has not been effective in achieving its objectives. The Bureau believed that a special rapporteur would afford a far less cumbersome, less expensive and more flexible way of focusing world attention on the issue of slavery. A special rapporteur would, however, be less effective than the Working Group could be in monitoring the implementation of the slavery-related conventions, but the Working Group should be encouraged to improve its procedures, as suggested above, for example.

88. The proposals of the Bureau of the Commission's fifty-fourth session were referred by the Commission's fifty-fifth session to the inter-sessional open-ended Working Group on Enhancing the Effectiveness of the Mechanisms of the Commission to continue the comprehensive examination of the Bureau's report and to report to the fifty-sixth session of the Commission in 2000. In her statement, made on behalf of the Commission at the conclusion of its fifty-fifth session, the Chairperson observed, with respect to the Sub-Commission, that, "[w]hile fully valuing the distinctive role and contribution of the Sub-Commission over its more than 50-year history, the Commission considers that it too is in need of thorough review (E/1999/23-E/CN.4/1999/167, para. 552). The open-ended Working Group of the Commission considered, but did not adopt the proposal for a Special Rapporteur on contemporary forms of slavery, but decided to recommend that the sessions of the Working Group on Contemporary Forms of Slavery be reduced from eight to five days. That recommendation, along with the others contained in the report of the Working Group (E/CN.4/2000/112), was adopted by the Commission at its fifty-sixth session (decision 2000/109 of 26 April 2000).

IV. CONCLUSIONS AND RECOMMENDATIONS

89. The true effectiveness of a treaty can be assessed by the extent to which the States parties apply its provisions at the national level. The implementation of treaties generally refers to both the national measures adopted by States and international measures and procedures adopted to

review or monitor those national actions. There is no such international mechanism for the monitoring and enforcement of States' obligations to abolish slavery and related practices. The right of all individuals to be free from slavery is a basic human right; yet this lack of an adequate implementation procedure does little to encourage Member States to establish safeguards against all contemporary forms of slavery. The mandate of the Working Group on Contemporary Forms of Slavery could be extended to incorporate such a function to provide for a systematic review procedure. Alternatively, the Working Group could improve its own procedures to focus on thematic issues relevant to the prevention of slavery. Another option would be for the Commission to revive its previous proposal that the Working Group be transformed into a special rapporteur of the Commission on Human Rights. Whatever mechanism the Commission and Sub-Commission might choose to improve the implementation of the many treaties against slavery, this updated review of the international law against slavery should be published in order to continue the work of the Sub-Commission's previous studies[66] and as a means to further understanding of the long-standing struggle to abolish slavery and its contemporary manifestations.

Notes

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[2] Michael Dottridge, Director.

[3] Report of the Working Group on Contemporary Forms of Slavery on its twenty-third session, (E/CN.4/Sub.2/1998/14), para. 22.

[4] Mohamed Awad, Report on Slavery (United Nations publication, Sales No. E.67.XIV.2), United Nations, New York, 1966; see also note 22, infra.

[5] Benjamin Whitaker, Slavery: report updating the Report on Slavery submitted to the Sub-Commission in 1966 (United Nations publication, Sales No. E.84.XIV.1), United Nations, New York, 1984.

[6] Universal Declaration of Human Rights, art. 4.

[7] It was held to be part of the jus gentium under Roman law. Alan Watson, "A Slaves Marriage Dowry or Deposit", Journal of Legal History, vol. 12, 1991, p. 132, see also W.W. Buckland, The Roman Law of Slavery, 1908, C.W.W. Greenidge, Slavery, 1958, pp. 15-18, Roger Sawyer, Slavery in the Twentieth Century, 1986, pp. 1-8, see also Kevin Bales and Peter T. Robbins, "No One Shall be Held in Slavery or Servitude: A Critical Analysis of International Slavery Agreements", Human Rights Review (forthcoming).

[8] M. Burton, The Assembly of the League of Nations, 1941, p. 253. According to article 22 of the League of Nations Covenant, "... the Mandatory must be responsible for the administration of the territory under conditions which will guarantee ... the prohibition of abuses such as the slave trade".

[9] M. Cherif Bassiouni, "Enslavement as an International Crime", New York University Journal of International Law and Politics, vol. 23, 1991, p. 445, Yearbook of the International Law Commission 1963, vol. II, United Nations publication (Sales No. 63.V.2), United Nations, New York, 1964, pp. 53, 198-199 (the prohibition against slavery is one of the oldest and best-settled rules of jus cogens); Human Rights Committee, General Comment No. 24, Official Records of the General Assembly, Fiftieth session, Supplement No. 40 (A/50/40), annex V, para. 8, see also A. Yasmine Rassam, "Contemporary Forms of Slavery and the Evolution of the Prohibition of Slavery and the Slave Trade Under Customary International Law", Virginia Journal of International Law, vol. 39, 1999, p. 303.

[10] Barcelona Traction, Light and Power Co, Ltd. (Belgium v. Spain), Judgment of 5 February 1971, I.C.J. Reports, 1970, p. 32.

[11] Renee Colette Redman, "The League of Nations and the Right to be Free from Enslavement: the First Human Right to be Recognized as Customary International Law", Chicago-Kent Law Review, vol. 70, 1994, pp. 759, 780.

[12] Bassiouni, supra note 9, p. 448.

[13] Report of the Temporary Slavery Commission to the Council of the League of Nations (A.17.1924.VI.B), 1924, quoted in The suppression of slavery: Memorandum submitted by the Secretary-General to the Ad Hoc Committee on Slavery, 1951, para. 22.

[14] Ibid., para. 80. The report to the Sixth Committee of the League of Nations Assembly in 1926 also clarified, in relation to article 2 (b) of the final text of the Slavery Convention, that the words "notably in the case of domestic slavery and similar conditions" were being omitted on the grounds that "such conditions come within the definition of slavery contained in the first article and that no further prohibition of them in express terms was necessary. This provision applies not only to domestic slavery but to all those conditions mentioned by the Temporary Slavery Commission ... i.e. debt slavery, the enslaving of persons disguised as adoption of children and the acquisition of girls by purchase disguised as payment of dowry".

[15] V. Nanda and C. Bassiouni, "Slavery and the Slave Trade: Steps Toward Eradication", Santa Clara Lawyer, vol. 12, 1971, pp. 424, 430.

[16] For details of conventions dealing with traffic in persons and exploitation of prostitution, see sections on Trafficking and Prostitution, infra.

[17] Report of the Ad Hoc Committee of Experts on Slavery (E/AC 33/13), 1951, p. 13.

[18] Mohamed Awad, Report of the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, "Question of slavery and the slave trade in all their practices and manifestations, including the slavery-like practices of apartheid and colonialism" (E/CN 4/Sub 2/322), 1971, para. 12.

[19] The term "servitude" is not used in the Supplementary Convention, which refers instead to "institutions and practices similar to slavery" and "persons of servile status".

[20] See, e g. United Nations document E/CN 4/Sub 2/1982/20 (defining "slavery" in paragraph 9 as "any form of dealing with human beings leading to the forced exploitation of their labour"), Rome Statute of the International Criminal Court (A/CONF 183/9) (1998) (defining, in article 7 (2) (c), "enslavement" as "the exercise of any or all of the powers attaching to the right of ownership over a person ... includ[ing] the exercise of such power in the course of trafficking in persons, in particular women and children". This definition is essentially the same as the original definition adopted by the League of Nations over 60 years ago, adding only a specific reference to trafficking).

[21] The question of whether economic imperatives constitute a form of "force" is often debated, particularly in relation to traffic in women and exploitation of prostitution. For a discussion of this debate see section on Forced Prostitution, infra.

[22] Rights guaranteed respectively by article 10 and article 7 of the International Covenant on Civil and Political Rights. On a number of occasions, victims of slavery have "disappeared" while being trafficked or held in slavery. The enforced or involuntary disappearance of victims of slavery has been facilitated by the secrecy in which victims of slavery are often kept: being prevented from communicating with others, sometimes because of their isolation, for example on large agricultural estates, and sometimes because of their virtual imprisonment. See, e g. recommendation on the question of disappearances linked to contemporary forms of slavery, in Report of the Working Group on Contemporary Forms of Slavery on its seventeenth session (E/CN 4/Sub 2/1992/34), 1992, p. 27.

[23] See, e g. International Covenant on Civil and Political Rights, art. 7.

[24] Ibid., arts. 14 and 16.

[25] Ibid., art. 18 (2). "No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or beliefs of his choice".

[26] Ibid., art. 23.

[27] Report of the Working Group on Contemporary Forms of Slavery on its eighteenth session (E/CN 4/Sub 2/1993/30), para. 43.

[28] See report of the Working Group on Contemporary Forms of Slavery on its fifth session (E/CN.4/Sub.2/434), (1979), paras. 10-16.

[29] See section on Debt bondage, infra.

[30] See the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted on 18 June 1998 by the International Labour Conference at its 86th Session.

[31] The ILO Forced Labour Convention, 1930 is the most widely ratified ILO convention with 139 States parties.

[32] X v. Federal Republic of Germany, Application No. 4653/70, European Commission on Human Rights, Decisions and Reports, vol. 46, 1974, p. 22.

[33] Convention No. 117, which entered into force on 23 April 1964, has been ratified by only 32 States.

[34] Convention No. 131, which entered into force on 29 April 1972, has been ratified by only 41 States.

[35] Several previous conventions had a similar objective. ILO Convention No. 26 and Recommendation No. 30 (applicable to trades) and Convention No. 99 and Recommendation No. 89 (applicable to agriculture) stipulated that the minimum wage should not be fixed at a lower rate than one which would ensure the subsistence of the worker and his or her family.

[36] Convention No. 95, which entered into force on 24 September 1952, has been ratified by 94 States.

[37] The range of abuses was described in detail by the Sub-Commission's Special Rapporteur on exploitation of labour through illicit and clandestine trafficking, Halima Embarek Warzai, appointed in 1973. Her final report was issued as a United Nations publication in 1986 (Sales No. E.86XIV.1).

[38] In addition to the International Agreement for the Suppression of the White Slave Trade of 1904, these treaties include the International Convention for the Suppression of the White Slave Traffic of 4 May 1910, the International Convention for the Suppression of the Traffic in Women and Children of 30 September 1921, and the International Convention for the Suppression of the Traffic in Women of Full Age of 11 October 1933. A further draft convention was prepared by the League of Nations in 1937, but was not adopted.

[39] General Assembly resolution 48/104 of 20 December 1993.

[40] Report of the Working Group on Contemporary Forms of Slavery on its twenty-third session (E/CN.4/Sub.2/1998/14), recommendations 3 and 4.

[41] See Rome Statute of the International Criminal Court, supra note 20 (defining slavery and trafficking in persons as crimes against humanity).

[42] See also International Convention for the Suppression of the Traffic of Women of Full Age, art. 1 (similarly banning traffic in women "even with [their] own consent").

[43] Ibid., at preamble (stating that "prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community ...").

[44] See, e.g. Convention on the Elimination of All Forms of Discrimination against Women, art. 6 (requiring States parties to suppress the "exploitation of prostitution of women").

[45] International Covenant on Civil and Political Rights, art. 2. Individuals also have an obligation not to engage in slavery; see, e.g. Rome Statute of the International Criminal Court, supra note 20, art. 7 (c).

[46] See, e.g. International Covenant on Civil and Political Rights, art. 41 (c).

[47] A similar complaint mechanism is being developed for the Committee on Economic, Social and Cultural Rights. It should be noted that no individual communications are known to have related to contemporary forms of slavery.

[48] In general, these thematic mechanisms have the capacity to receive information from individuals, to make direct appeals to Governments, to visit countries, and ultimately to seek an end to specific violations. Their prompt action and capacity to act in regard to all countries - regardless of whether the country has ratified a specific treaty - make the thematic procedures one of the most effective human rights tools in the United Nations system - helping to save lives, to stop torture, to find disappeared people, and otherwise to protect individuals. The rapporteurs provide comprehensive reports each year to the Commission.

[49] In 1953, by resolution 794 (VIII) of 23 October 1954, the General Assembly approved the Protocol amending the Slavery Convention to bring it within the United Nations system.

[50] Awad, supra note 18, para. 163.

[51] Supplementary Convention, art. 8 (3).

[52] Martin Scheinin, "International Mechanisms and Procedures for Implementation", in An Introduction to the International Protection of Human Rights, Raija Hanski and Markku Suksi (eds.), 1997, p. 56; see also E. A. Landy, The Effectiveness of International Supervision: Thirty Years of ILO Experience, 1966.

[53] Both Committees derive their authority from decisions of the International Labour Conference and the ILO Governing Body. See N. Valticos and G. von Potobsky, International Labour Law, 1994, pp. 239-245.

[54] There is a mechanism under article 37 of the ILO Constitution which provides that any dispute relating to the interpretation of a provision of a convention can be referred to the International Court of Justice. Although this is the only forum that has jurisdiction to give definitive interpretations, this procedure has been used on only one occasion, in 1932.

[55] Standing Orders concerning the Procedure for the Examination of Representations under Articles 24 and 25 of the Constitution of the ILO, ILO Official Bulletin, vol. 64, Series A, No. 1, 1981, p. 93.

[56] International Labour Office, Impact of International Labour Conventions and Recommendations, 1976, p.68 ; see also Klaus Samson, "The Standard-Setting and Supervisory System of the ILO", in An Introduction to the International Protection of Human Rights, supra note 52, p. 170.

[57] Ibid.

[58] Samson, supra note 56, p. 170.

[59] Patrick Bolle, "Supervising Labour Standards and Human Rights: The Case of Forced Labour in Myanmar (Burma)", International Labour Review, vol. 137, 1998, p. 391.

[60] Report of the Commission of Inquiry Appointed under Article 26 to Examine the Observance of Myanmar of the Forced Labour Convention, 1930 (No. 29), 1998, p. 66.

[61] Economic and Social Council decision 16 (LVI) of 17 May 1974.

[62] See Traffic in women and girls: report of the Secretary-General (A/51/309), (1966).

[63] Ibid., para. 56.

[64] Kathryn Zoglin, "United Nations Action Against Slavery: A Critical Evaluation", Human Rights Quarterly, vol. 8, 1986, pp. 306, 329.

[65] Ibid., p. 339.

[66] See Awad, supra note 4; Whitaker, supra note 5.